Supreme Court, U.S.
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No. 00-273

IN THE

Supreme Court of the United States

JAMES P. MACDONALD and BARBARA MACDONALD,

Petitioners,

v.

CHRISTOPHER A. PLEMPEL,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPERIOR COURT OF NEW JERSEY

BRIEF IN OPPOSITION

KENNETH R. PENTONY
Counsel of Record
ANTHONY M. PAGANO
NOVINS, YORK & PENTONY, P.A.
Attorneys for Respondent
202 Main Street
Toms River, NJ 08754
(732) 349-7100

162154

Counsel Press LLC
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED FOR REVIEW

On November 30, 1995, a multi-vehicle accident involving the parties herein occurred in the State of North Carolina. At the aforementioned time, Petitioners, James P. MacDonald and Barbara MacDonald were New Jersey residents and the Respondent, Christopher A. Plempel was a Virginia resident. The matter was dismissed by the trial court for lack of personal jurisdiction over defendant Plempel and on February 15, 2000, the Appellate Division of the State of New Jersey affirmed the decision of the Honorable Robert A. Coogan who sat below.

Subsequently, the Petitioner filed a Petition for Certification with the Supreme Court of the State of New Jersey. Same was denied on May 18, 2000.

1. Whether the United States Supreme Court should overrule the decision in *International Shoe v. Washington*, 326 U.S. 310, 66 S. Ct. 154 (1945) which has served as the standard in defining *in personam* jurisdiction.

2. Whether the facts in the matter before this Court satisfy the limitations contained in the due process clause of the Fourteenth Amendment encompassing minimum contacts and traditional notions of fair play and substantial justice.

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STATEMENT OF THE CASE

On November 30, 1995, a multi-vehicle accident involving the parties herein occurred in the State of North Carolina. At the aforementioned time, petitioners, James P. MacDonald and Barbara MacDonald were New Jersey residents and plaintiff Speed Limit, Inc. was a Florida corporation. The petitioners contend that injuries and damage were sustained when a boat trailer being towed by respondent Christopher A. Plempel crossed over a median while he was traveling on Interstate 95 near Rocky Mount, North Carolina. Mr. Plempel, a resident of the state of Virginia, was hauling a boat when the trailer became unhitched. Mr. Plempel's vehicle was insured under a policy of insurance issued by the Allstate Insurance Company in Virginia.

On March 19, 1997, the petitioners filed a Complaint in the State of New Jersey. In addition to suing Mr. Plempel for negligence, petitioners' Complaint alleged that Allstate had not entered into good faith negotiations for settlement of the liability claims and that Allstate should somehow incur liability for a "bad faith" failure to settle the claim.

Christopher Plempel was served at his home in Falls Church, Virginia on April 14, 1997 and Allstate was served in its Brick, New Jersey offices on May 22, 1997.

A request to enter default was made by the petitioners on or about August 1, 1997 and on December 1, 1997, the petitioners filed a Motion to amend the Complaint. On December 19, 1997, the Court ordered that the petitioners were permitted to file the Amended Complaint and an Answer was filed on behalf of Allstate Insurance Company on April 11, 1998.

On or about March 5, 1998, a motion was made on behalf of respondent Plempel to quash service and dismiss the Complaint for lack of jurisdiction. As a result of that motion, the Court entered an order dated April 3, 1998 wherein the petitioners were given ninety (90) days in which to pursue *in personam* jurisdiction discovery.

On or about September 18, 1998, respondent Plempel filed a Motion for Summary Judgment and same was granted on October 15, 1998. Counsel for the petitioners thereafter applied, *sua sponte*, for a voluntary dismissal without prejudice as to the claim against Allstate. In addition, on October 19, 1998, the Court ordered service of process quashed and plaintiffs' Complaint dismissed for lack of personal jurisdiction over respondent Plempel.

On November 23, 1998, the petitioners filed a Notice of Appeal and on December 21, 1998 defendant Allstate Insurance Company filed a Motion to Dismiss the Appeal as to such defendant. Same was subsequently granted as to Allstate. On January 27, 2000, the parties herein argued the matter before the Appellate Division of the Superior Court of New Jersey. On February 15, 2000, the Appellate Division panel comprised of Judges King, Carchman, and Lefelt decided the matter, ultimately affirming the decision of the Honorable Robert A. Coogan who sat below.

The petitioners subsequently filed a Petition for Certification with the Supreme Court of the State of New Jersey and same was denied on May 19, 2000.

REASON FOR DENYING THE WRIT

RESPONDENT SUBMITS THAT CERTIFICATION SHOULD BE DENIED AS THIS MATTER INVOLVES A FACT PATTERN THAT HAS BEEN THE SUBJECT OF AN AMPLE BODY OF CASE LAW WHICH SHOULD NOT BE OVERTURNED

The Respondent asserts that the lower courts did not err, made proper findings of fact, and applied the properly stated rule of law. The jurisdictional standard need not be updated as so doing would contradict all notions of fair play and substantial justice.

In personam jurisdiction against an out of state defendant is accomplished in New Jersey via New Jersey Court Rule 4:4-4(b)1 which provides that such a defendant may be subject to jurisdiction of the New Jersey courts if due process is not violated. In the matter at bar, service of process was obtained via personal service of defendant Plempel at his home in Falls Church, Virginia while Allstate Insurance Company, served in its Brick, New Jersey office, is not a party hereto as they were voluntarily dismissed below.

In *Cooke v. Yearington*, 62 N.J. 123 (1973), the New Jersey Supreme Court found New Jersey long arm service to be limited by the holding of the United States Supreme Court in *International Shoe Company v. Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945). The Court in *International Shoe* held that a state court may take jurisdiction over a controversy by appropriate notice to a non-resident if the defendant had minimal contacts with the foreign state. The Court further opined that due process is not violated if the maintenance of the suit does not offend traditional notions of fair play and substantial justice.

New Jersey courts have thus adopted the threshold "minimum contacts" test in stating that the doctrine is to be approached on a case by case basis and without meeting the aforementioned requirements, New Jersey may not maintain personal jurisdiction over an out of state defendant. *Waste Management Incorporated v. Admiral Insurance Company*, 138 N.J. 106 (1994).

In *Waste Management*, the New Jersey Supreme Court addressed the United States Supreme Court's ruling in *International Shoe* and found that the minimum contacts doctrine was implemented to protect a defendant from litigating in an inconvenient forum and to ensure that the states did not exceed the jurisdictional limitations of the Federal system. Critical to the due process analysis is whether or not a defendant could reasonably anticipate being hauled into the court of the foreign state.

In the subject case, respondent Christopher Plempel was, at the time of the accident, and still is a resident of the State of Virginia. On the date of the accident he was traveling in his Virginia registered vehicle, to the State of Florida via Interstate 95 in the State of North Carolina. The respondents, residents of New Jersey, were traveling in the opposite lane of travel on the interstate when the accident occurred near Rocky Mount, North Carolina. Despite the accident, Mr. Plempel, the Virginia resident, had no reasonable expectation that he would be required to defend himself in a personal injury action stemming from an incident that happened in North Carolina, in the State of New Jersey.

The court below graciously allowed discovery in an effort to give the plaintiffs an opportunity to establish minimum contacts within New Jersey and when the appellants failed to do so, summary judgment was granted.

The petitioners herein attempt to bootstrap a legal argument by asserting that because the accident happened on an interstate highway which links to the forum state, jurisdiction attaches via the defendant's insurance policy. Note however, that such analysis is flawed in that the policy is one of indemnification and the party defendant is Christopher Plempel, not Allstate Insurance Company, who was voluntarily dismissed at the trial level. Furthermore, in the State of New Jersey a judgment is entered against the individual and not the insurance carrier.

Even assuming appellants' argument to be somehow meritorious, such a conclusion would subject this respondent to jurisdiction in just about every state on the eastern coast of the United States.

Petitioners also attempt to analogize the facts herein to those set forth in *Rush v. Savchuk*, 444 U.S. 320, 100 S. Ct. 571 (1980) and *O'Connor v. Lee Hy Paving Corp.*, 579 F.2d 194 (2d Cir. 1978), *cert. denied*, 439 U.S. 487, 61 S. Ct. 1020 (1978). However, in *Rush* the defendant was a resident of the forum state at the time of the accident and in *O'Connor* the focus was that of the liability of the liability carrier doing business in the forum state. In this case, the respondent has never resided in the State of New Jersey and petitioners' attempt to gain jurisdiction over the respondent via his insurance policy fails in that the policy is one of indemnification and the subject company was voluntarily dismissed at the trial level.

Petitioners seek to assert that the matters of convenience, fair play, and substantial justice warrant jurisdiction in New Jersey and they assert that *International Shoe* should be overruled so as to "be updated to meet the needs of changes in modern technologies in communication and travel."

To the contrary, the only parties to whom New Jersey is convenient are the petitioners. Respondent Plempel has absolutely no contact in this state and could not have reasonably expected to be dragged into New Jersey to litigate a claim, simply because he purchased an insurance policy.

This is not a matter in which the petitioner was without a forum. Suit could have been filed in either the State or Federal Courts of Virginia or North Carolina and the petitioner is simply attempting to "forum shop" in an effort to gain access to the New Jersey State court system. The petitioner was not left without remedy, and with full knowledge of Mr. Plempel's defense, petitioner has continued on this journey in an effort to "forum shop" in direct contradiction to that which has served as the basis for our entire body of jurisdictional law.

Litigating this matter in the proper forum state would not create a hardship on the petitioners and as stated, Christopher Plempel has not met the "minimum contacts" standard set for in *International Shoe*, *supra*. Thus, the State of New Jersey may not maintain or obtain personal jurisdiction over this respondent.

Finally, petitioners assert that New Jersey does have jurisdiction because Mr. Plempel was traveling out of his home state, on an interstate highway, and he was insured by a carrier that does business within the State of New Jersey. Petitioners assert that same constitutes sufficient contacts and requests that this Court overrule *International Shoe* to meet with changes in today's society.

The analysis is flawed in that the petitioners are seeking to obtain jurisdiction through the insurance policy of the respondent. If the Court were to entertain such a notion, the indemnification provisions of all insurance policies, automobile and otherwise, would be rendered meaningless. Parties who are insured through companies that do business on a national scale would be subjecting themselves to jurisdiction all over the United States.

The Appellate Division of the State of New Jersey examined the facts of the matter, reviewed petitioners' "novel" jurisdictional arguments in light of the record and pertinent legal precedents, and determined that Judge Coogan correctly dismissed the matter. The Appellate Division agreed that a Virginia resident, driving to Florida, should not be "haled" into any state's court along Interstate 95 simply because of an automobile accident in North Carolina. In this case, the Court found that Mr. Plempel had insufficient contact with New Jersey to subject him to our courts and properly decided the matter in light of the foregoing.

The issues raised by the petitioners have been amply addressed by both the Supreme Court of the United States and the Supreme Court of the State of New Jersey. The courts have determined, through a wealth of case law and analysis, that the standard test for jurisdiction is that of "minimum contacts" of a defendant to a foreign state. The issues herein are not novel questions of law. In fact, they have been raised and addressed for many years and the facts of the case at bar clearly indicate that the subject respondent has no ties to the State of New Jersey and therefore, this state has no jurisdiction over him.

Petitioner does not set forth an ample factual basis upon which *International Shoe* should be overruled and absent same, the Writ for Certiorari should be denied.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that writ of certiorari be denied.

Respectfully submitted,

KENNETH R. PENTONY
Counsel of Record
ANTHONY M. PAGANO
NOVINS, YORK & PENTONY, P.A.
Attorneys for Respondent
202 Main Street
Toms River, NJ 08754
(732) 349-7100